



August 10, 2022

Robert Jackson  
Branch Chief, Construction Center 4  
Public Building Services  
National Capital Region (R11)

**RE: Project No: 47PM1119C0006, Request for Equitable Adjustment (REA)**

We have appreciated the opportunity to discuss these costing issues with you. Attached is MOTIR's draft proposal for an equitable adjustment, as promised.

Thank you so much for your willingness to review the proposal before we put it in final form. We are grateful for your feedback.

Acknowledging the benefit of hindsight, we believe it is important to summarize how we got to this point in the first place, by laying out the roots causes of the issues that impacted the project. They are categorically itemized below:

**PROCUREMENT/CONTRACT DELIVERY METHOD:**

This project was solicited and procured as a Design build contract with no Guaranteed Maximum price (GMP) or Firm Fixed Price (FFP). The cost submitted in response to the solicitation was based on drawings that were conceptual at best. Article F Paragraph 2 of the scope of work states:

*"...design DID documents are conceptual in nature and are intended to depict the overall intent of the project in terms of the general architectural, structural, MEP, and life safety design concept .... It further goes on read "...As pre-proposal documents they are preliminary in nature, are not fully coordinated and are not intended to indicate or describe the scope of work required for the full performance and completion of the project."*

It is with this understanding that our final proposal, accepted by GSA, which were incorporated into the contract documents, explicitly stated the following:

*"The Total Contract Offer is not necessarily inclusive of all elements of the project that may be exercised at the time of contract award."*

These drawings were tagged "Design Intent drawing" and we priced the project based on the information available to us at the time. It is widely understood and implied that pricing on a Design Build contract, based on incomplete "Design Intent" drawings, are budgetary at best; and will warrant additional costs as the project documents are further developed, and/or changes are made. We proceeded in good faith based on that understanding, to serve GSA as valued client.



This contract delivery method created concerns in three (3) major areas, which are listed below.

➤ **Design Changes during Construction:**

Our Schedule was reviewed and approved by GSA and incorporated as part of the contract documents. This schedule was based on the mandated performance period of the contract and required that certain early construction activities had to commence and run concurrent with design activities; however, Owner Directed Design Changes were being made at critical points during construction, which had cost impacts due to re-work and additional scope.

➤ **Inadequate and non-segmented timeline accounted for in the period of performance, for proper design, preconstruction, and due diligence:**

Given the preliminary nature of the design intent drawings, which were used as the basis of awarding the contract, a set, uninterrupted design performance period was not established to further develop drawings that MOTIR was tasked to build with. Instead, the approximate period of performance mandated for the base contract was set at 182 days from date of notice to proceed, for ALL activities (Design, Preconstruction and Construction). Given GSA's explicit position that the completion date could not be moved, a schedule that had the above-mentioned activities running concurrently was reviewed and accepted by GSA.

Due to the preliminary nature of the "design intent" drawings, and constant changes mentioned above, we were limited to effectively source, procure, and scope out subcontractors and vendors, which was another contributing factor for unforeseen/additional material and labor costs. We simply could not lock-in pricing with our vendors and subcontractors due to preliminary drawings and an ever-changing scope of work.

➤ **No accommodations for contingency cost in the solicitation:** Given the preliminary nature of the drawings, the pricing sheet in the solicitation documents did not provide accommodations for us to provide contingency costs that could be billed against, as changes were made as the drawings were developed.

**AN ONGOING NATIONAL HEALTH PANDEMIC:**

We are all aware of the impacts that the COVID 19 pandemic continues to have on small businesses. Aside from disruptions due to supply chain issues, and material scarcity; our productivity and costs on the project were severely impacted due to a drastic reduction in number of workers that could be on site at a time, per CDC guidelines and regulations. To make matters worse, we encountered numerous positive covid tests, which created a logistical nightmare given the access, badging and prescreening requirement; that is synonymous with working in a secured building. Regardless of this loss in productivity and manpower, we were required per contract, to supervise the project which increased/extended our General Conditions with little progress on the schedule.

**MULTIPLE CONTRACTING OFFICERS**

During the execution of the project, we cycled through three (3) different contracting officers. That created a lag in approvals, delays from updating replacements on project related history and furtherance of conversations about change orders, along with other critical follow-up items resulting in costs and



schedule impacts. You will see from the back up documents herein, there are multiple Owner Directed Change Orders that were submitted, but never processed. We still do not have any feedback on why a number of them have not been processed and paid thus far.

### **WORKING UNDER DURESS**

We had the misfortune of working under an immense amount of pressure stemming from misunderstandings brought on by the factors listed above. While we were empathetic to the predicament that GSA was in, quite honestly, some of those misunderstandings were toxic and counterproductive. Our expressed concerns about some of the factors mentioned in the paragraphs above, were met with threats of termination, liquidated damages, and bond claims. One of these instances occurred when we attempted to present GSA with facts about certain items that were clearly not in our scope of work. After getting a threat of a bond claim in response, we had no other recourse but to perform those items even though they were not in our scope, with hopes of submitting those costs for payment. These threats created an undue economic duress as we continued to work in good faith for a valued client.

Mr. Jackson, in closing, I hope you recognize that the effort I have put in presenting this narrative to you, is not done with the intent to point fingers; however, it is a testament to how much we value the GSA as a client. I am optimistic that this critical dialogue will improve on the relationship we have fostered with your agency.

I appreciate the time you have taken to review these documents and please feel free to let me know if you have any questions or concerns.

### **REQUEST FOR EQUITABLE ADJUSTMENT**

In accordance with *CFR 48, Federal Acquisitions Regulation (FAR) 552.243.71 Equitable Adjustments* and for your review and consideration, we are submitting a Request for Equitable Adjustment (REA) for Contract 47PM1119C0006, *1800 F Street Collocation*. We are requesting a total sum of \$4,053,015.57 as an equitable adjustment to this contract.

As we continue to work diligently to deliver this project during a time of major public health crisis, especially one that has shaken our communities of color to the core, we have outlined our request to have the contract amount adjusted to accurately reflect our costs and monies due. **The table below summarizes and classifies the relief that we seek, and backup documents substantiating these costs are included herewith.**

Sincerely,

**(b) (6)**

Emmanuel O. Irono  
Partner  
CAC-MOTIR Joint Venture, LLC



SUMMARY		
OWNER DIRECTED FIELD CHANGE		\$1,175,535.99
OWNER DIRECTED DESIGN CHANGE		\$243,999.84
WORK NOT IN SCOPE		\$261,052.39
DESIGN CHANGES		\$567,030.57
CONTRACTOR SUBMITTED COSTS		\$1,805,396.78
	<b>TOTALS</b>	<b>\$4,053,015.57</b>



### OWNER DIRECTED DESIGN CHANGE

Section	Description	Actual Cost	Payments/ Credits	Amount Requested
I.2	CE# 1 Auditorium Window Treatments	\$6,025.77		\$6,025.77
I.4	CE# 7 Security Cameras & Duress Buttons at Childcare Center	\$38,106.23		\$38,106.23
I.9	CE# 2 Artwork Images	\$4,023.89	\$2,077.00	\$1,946.89
I.11	CE# 10 Multipurpose & Toddler Rooms	\$32,521.63	\$23,920.00	\$8,601.63
I.12	CE# 13 Pathway for IT Cabling	\$29,874.02	\$19,969.11	\$9,904.91
I.13	CE# 34 Sink Drains in Toddler Room	\$9,487.39	\$6,213.96	\$3,273.43
I.15	CE# 46 Adding Plywood for TV Mounts	\$14,465.96		\$14,465.96
I.16	CE# 8 Child Care Fire Rated Doors & Store Fronts	\$126,496.03	\$51,659.00	\$74,837.03
I.17	CE# 38 Signage & Wayfinding Re-Scoping	\$132,567.19	\$65,684.19	\$66,883.00
I.18	CE# 28 Multipurpose & Toddler Room Revisions	\$23,046.03	\$3,091.04	\$19,954.99
	<b>TOTALS</b>	<b>\$416,614.14</b>	<b>\$172,614.30</b>	<b>\$243,999.84</b>

### WORK NOT IN SCOPE

Section	Description	Actual Cost	Payments/ Credits	Amount Requested
I.7	Fan Coil Units, Supply Diffusers and Building Tie-In	\$261,052.39		\$261,052.39
	<b>TOTALS</b>	<b>\$261,052.39</b>	<b>0</b>	<b>\$261,052.39</b>



## DESIGN CHANGES

Section	Description	Actual Cost	Payments/ Credits	Amount Requested
I.5	CE #47 – Fire Sprinkler at Demountable on the 7th Floor	\$38,560.36		\$38,560.36
I.14	CE# 30 Fitness Center Floor Leveling	\$33,688.46	\$17,897.00	\$15,791.46
IV.1	Acoustical Wall Panels	\$197,464.50	\$44,616.00	\$152,848.50
IV.3	Locker Room Accessories	\$9,168.04		\$9,168.04
IV.11	Auditorium HVAC, Electrical & Telecom	\$444,739.35	\$147,428.00	\$297,311.35
IV.13	Auditorium Chair Lift	\$34,328.98	\$2,754.00	\$31,574.98
IV.14	Speciality Lighting	\$21,775.88		\$21,775.88
	<b>TOTALS</b>	<b>\$779,725.57</b>	<b>\$212,695.00</b>	<b>\$567,030.57</b>





CONTRACTOR SUBMITTED COSTS				
Section	Description	Actual Cost	Payments/ Credits	Amount Requested
1.10	Additional Asbestos & Lead Piant Abatement	\$251,946.54	\$92,297.29	\$159,649.25
I.20	Return on Interest	\$300,223.38		\$300,223.38
II.	Extended Conditions - Daily Rate	\$705,595.20		\$705,595.20
III.	Childcare Center Additional Work	\$179,740.07		\$179,740.07
IV.5	7th Floor Ceiling Baffles	\$60,280.99	\$9,216.00	\$51,064.99
IV.6	Auditorium Seating & Furniture	\$101,014.63	\$54,628.00	\$46,386.63
IV.7	White Board - Collocation	\$160,512.76	\$5,008.00	\$155,504.76
IV.8	Auditorium Painting	\$60,731.41	\$28,704.00	\$32,027.41
IV.9	Lateral File Cabinets	\$29,003.37	\$4,608.00	\$24,395.37
IV.16	Equitable Adjustment Preparation	\$135,101.15		\$135,101.15
IV. 18	Daily On-Site Cleaning	\$15,708.57		\$15,708.57
	<b>TOTALS</b>	\$1,999,858.07	\$194,461.29	<b>\$1,805,396.78</b>